

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Rev. Rul. 96-12, page 4.

LIFO; price indexes; department stores. The December 1995 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, December 31, 1995.

T.D. 8647, page 7.

Final regulations under section 1445 of the Code relating to withholding upon certain distributions or dispositions of U.S. real property interests.

T.D. 8649, page 5.

Final regulations under section 1258 of the Code relating to conversion transactions.

EMPLOYEE PLANS

Rev. Proc. 96-8A, page 10.

User fees. Corrections are made to Rev. Proc. 96-8, 1996-1 I.R.B. 187, concerning user fees.

ADMINISTRATIVE

Announcement 96-11, page 11.

Supplemental information on Treasury bills for Publication 1212, List of Original Issue Discount Instruments (Rev. Nov. 95), is given.

Finding Lists begin on page 15.

Announcement of Disbarments and Suspensions begin on page 12.

Mission of the Service

The purpose of the Internal Revenue Service is to collect the proper amount of tax revenue at the least cost; serve the public by continually improving the

quality of our products and services; and perform in a manner warranting the highest degree of public confidence in our integrity, efficiency and fairness.

Statement of Principles of Internal Revenue Tax Administration

The function of the Internal Revenue Service is to administer the Internal Revenue Code. Tax policy for raising revenue is determined by Congress.

With this in mind, it is the duty of the Service to carry out that policy by correctly applying the laws enacted by Congress; to determine the reasonable meaning of various Code provisions in light of the Congressional purpose in enacting them; and to perform this work in a fair and impartial manner, with neither a government nor a taxpayer point of view.

At the heart of administration is interpretation of the Code. It is the responsibility of each person in the Service, charged with the duty of interpreting the law, to try to find the true meaning of the statutory provision and not to adopt a strained construction in the belief that he or she is "protecting the revenue." The revenue is properly protected only when we ascertain and apply the true meaning of the statute.

The Service also has the responsibility of applying and administering the law in a reasonable, practical manner. Issues should only be raised by examining officers when they have merit, never arbitrarily or for trading purposes. At the same time, the examining officer should never hesitate to raise a meritorious issue. It is also important that care be exercised not to raise an issue or to ask a court to adopt a position inconsistent with an established Service position.

Administration should be both reasonable and vigorous. It should be conducted with as little delay as possible and with great courtesy and considerateness. It should never try to overreach, and should be reasonable within the bounds of law and sound administration. It should, however, be vigorous in requiring compliance with law and it should be relentless in its attack on unreal tax devices and fraud.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents of a permanent nature are consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

With the exception of the Notice of Proposed Rulemaking and the disbarment and suspension list included in this part, none of these announcements are consolidated in the Cumulative Bulletins.

The first Bulletin for each month includes an index for the matters published during the preceding month. These monthly indexes are cumulated on a quarterly and semiannual basis, and are published in the first Bulletin of the succeeding quarterly and semi-annual period, respectively.

The Bulletin Index-Digest System, a research and reference service supplementing the Bulletin, may be obtained from the Superintendent of Documents on a subscription basis. It consists of four Services: Service No. 1, Income Tax; Service No. 2, Estate and Gift Taxes; Service No. 3, Employment Taxes; Service No. 4, Excise Taxes. Each Service consists of a basic volume and a cumulative supplement that provides (1) finding lists of items published in the Bulletin, (2) digests of revenue rulings, revenue procedures, and other published items, and (3) indexes of Public Laws, Treasury Decisions, and Tax Conventions.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

For sale by the Superintendent of Documents U.S. Government Printing Office, Washington, D.C. 20402.

Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

§ 472.—Last-in, First-out Inventories Rev. Rul. 96-12

26 CFR 1.472-1: Last-in, first-out inventories.

LIFO; price indexes; department stores. The December 1995 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, December 31, 1995.

The following Department Store Inventory Price Indexes for December 1995 were issued by the Bureau of Labor Statistics on February 1, 1996. The indexes are accepted by the Internal Revenue Service, under § 1.472-1(k) of the Income Tax Regulations and Rev. Proc. 86-46, 1986-2 C.B. 739, for appropriate application to inventories of department stores employing the retail inventory and last-

in, first-out inventory methods for tax years ended on, or with reference to, December 31, 1995.

The Department Store Inventory Price Indexes are prepared on a national basis and include (a) 23 major groups of departments, (b) three special combinations of the major groups—soft goods, durable goods, and miscellaneous goods, and (c) a store total, which covers all departments, including some not listed separately, except for the following: candy, foods, liquor, tobacco, and contract departments.

BUREAU OF LABOR STATISTICS, DEPARTMENT STORE INVENTORY PRICE INDEXES BY DEPARTMENT GROUPS (January 1941 = 100, unless otherwise noted)

Groups	Dec. 1994	Dec. 1995	Percent Change from Dec. 1994 to Dec. 1995 ¹
1. Piece Goods.....	483.5	532.6	10.2
2. Domestics and Draperies.....	630.5	633.5	0.5
3. Women's and Children's Shoes.....	630.9	625.6	-0.8
4. Men's Shoes.....	907.3	891.0	-1.8
5. Infants' Wear.....	620.9	635.6	2.4
6. Women's Underwear.....	521.9	521.6	-0.1
7. Women's Hosiery.....	280.4	290.2	3.5
8. Women's and Girls' Accessories.....	560.6	559.9	-0.1
9. Women's Outerwear and Girls' Wear.....	413.9	407.1	-1.6
10. Men's Clothing.....	603.0	602.1	-0.1
11. Men's Furnishings.....	558.6	561.6	0.5
12. Boys' Clothing and Furnishings.....	472.4	481.8	2.0
13. Jewelry.....	979.4	978.1	-0.1
14. Notions.....	720.8	773.6	7.3
15. Toilet Articles and Drugs.....	854.2	870.8	1.9
16. Furniture and Bedding.....	637.3	669.0	5.0
17. Floor Coverings.....	564.2	564.5	0.1
18. Housewares.....	776.3	782.3	0.8
19. Major Appliances.....	249.4	246.1	-1.3
20. Radio and Television.....	83.9	79.1	-5.7
21. Recreation and Education ²	114.5	112.8	-1.5
22. Home Improvements ²	122.0	123.7	1.4
23. Auto Accessories ²	106.6	107.5	0.8
Groups 1-15: Soft Goods.....	584.4	585.1	0.1
Groups 16-20: Durable Goods.....	463.4	462.2	-0.3
Groups 21-23: Misc. Goods ²	114.1	113.3	-0.7
Store Total ³	544.0	543.7	-0.1

¹Absence of a minus sign before percentage change in this column signifies price increase.

²Indexes on a January 1986=100 base.

³The store total index covers all departments, including some not listed separately, except for the following: candy, foods, liquor, tobacco, and contract departments.

DRAFTING INFORMATION

The principal author of this revenue ruling is Stan Michaels of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Michaels on (202) 622-4970 (not a toll-free call).

Section 1258.—Recharacterization of Gain from Certain Financial Transactions

26 CFR 1.1258-1: Netting rule for certain conversion transactions.

T.D. 8649

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1 and 602

Regulations Under Section 1258 of the Internal Revenue Code of 1986; Netting Rule For Certain Conversion Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to conversion transactions. These regulations provide that certain gains and losses from positions of the same conversion transaction may be netted for purposes of determining the amount of gain that is recharacterized as ordinary income. These regulations reflect changes to the law made by the Revenue Reconciliation Act of 1993 and affect persons who enter into conversion transactions.

DATE: These regulations are effective December 21, 1995.

For applicability of these regulations, see EFFECTIVE DATES under the SUPPLEMENTARY INFORMATION part of the preamble.

FOR FURTHER INFORMATION CONTACT: Alan B. Munro, (202) 622-3950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has

been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1452. Responses to this collection of information are required to obtain netting relief for conversion transactions.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per recordkeeper varies from .05 to 10 hours, depending on individual circumstances, with an estimated average of .10 hour.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On December 27, 1994, the IRS published in the Federal Register a notice of proposed rulemaking and notice of public hearing at 59 FR 66498 (FI-43-94 [1995-1 C.B. 932]) under section 1258 of the Internal Revenue Code of 1986.

The IRS received a number of written comments on the proposed regulations. No requests to speak at the public hearing were received, however, and consequently the hearing was cancelled.

Explanation of Provisions

A. General

The proposed regulations allow taxpayers to net gains and losses on the positions of certain conversion transactions for purposes of section 1258(a). For a taxpayer to be eligible, the

proposed regulations require the taxpayer to identify, before the close of the day on which the positions become part of the conversion transaction, all the positions that are part of the conversion transaction. In addition, the taxpayer has to dispose of all the positions within a 14-day period that is within a single taxable year. The proposed regulations also define built-in loss and prohibit the netting of built-in loss against gain.

The commenters uniformly supported the netting relief provided by the proposed regulations. Accordingly, the final regulations are substantially unchanged from the proposed regulations.

The proposed regulations provide that the regulations will be effective for conversion transactions entered into on or after the date of filing of final regulations with the Federal Register. Several commenters requested that the regulations also apply to conversion transactions entered into prior to the filing date. In response to these comments, the final regulations provide for application of the regulations to any conversion transaction that is outstanding on December 21, 1995, provided that all the positions which are part of the conversion transaction are identified under §1.1258-1(b)(2) before the close of business on February 20, 1996. The final regulations also provide a transition rule for the same-day identification requirement that allows taxpayers to identify conversion transactions entered into prior to February 20, 1996, at any time on or before February 20, 1996.

Several commenters criticized the examples for failing to adjust the applicable imputed income amount (AIIA) under section 1258(b) for interest and dividends received. The scope of these regulations, however, is limited to netting relief. The IRS is still studying various situations to determine the extent to which it is appropriate to reduce the AIIA by reason of amounts capitalized under section 263(g), ordinary income received, or otherwise. Accordingly, Example 3 has been deleted and Examples 1 and 2 have been clarified to eliminate any implication on this issue.

One commenter requested that the identification requirement be eliminated as impractical, unnecessary, and a trap for the unwary. This same-day identification requirement is similar to identification requirements under sections 475 and 1221. Identification of all the

positions of a conversion transaction will aid examiners attempting to determine whether conversion transactions are present and will prevent mismatching of those positions by both taxpayers and agents. The final regulations retain the same-day identification requirement but provide a transition rule.

Some commenters asked that netting relief be expanded to cover unrealized losses in retained positions by allowing loss positions to be marked to market when a gain position is disposed of or terminated. Allowing retained positions to be marked to market raises valuation and other potentially complex issues. For example, many of the issues addressed by the regulations under section 475 would have to be addressed here. The complexity of these issues outweighs the potential benefit of allowing retained positions to be marked to market. Thus, the final regulations do not include a mark-to-market provision.

To preserve the character of gain that arose before a position became part of a conversion transaction, one commenter requested built-in gain rules similar to the built-in loss rules in the proposed regulations. The appropriateness of a built-in gain rule under section 1258 is beyond the scope of these regulations. Therefore, the final regulations do not address this issue.

The IRS is aware that section 1258 presents a number of issues not addressed by these final regulations. The IRS continues to study the scope of section 1258, the types of transactions that should be included under the regulatory authority of section 1258(c)(2)(D), and what reductions, if any, in the AIA are appropriate under section 1258(b). The IRS welcomes comments on these and other issues under section 1258.

B. Effective Dates

The regulations are effective for conversion transactions that are outstanding on or after December 21, 1995. In the case of a conversion transaction entered into before February 20, 1996, the same-day identification requirement is treated as satisfied if the identification is made on or before February 20, 1996.

Special Analyses

It has been determined that this Treasury decision is not a significant

regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Alan B. Munro, Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1258-1 is added to read as follows:

§1.1258-1 Netting rule for certain conversion transactions.

(a) *Purpose.* The purpose of this section is to provide taxpayers with a method to net certain gains and losses from positions of the same conversion transaction before determining the amount of gain treated as ordinary income under section 1258(a).

(b) *Netting of gain and loss for identified transactions—(1) In general.* If a taxpayer disposes of or terminates all the positions of an identified netting transaction (as defined in paragraph (b)(2) of this section) within a 14-day period in a single taxable year, all gains and losses on those positions taken into account for federal tax purposes within that period (other than

built-in losses as defined in paragraph (c) of this section) are netted solely for purposes of determining the amount of gain treated as ordinary income under section 1258(a). For purposes of the preceding sentence, a taxpayer is treated as disposing of any position that is treated as sold under any provision of the Code or regulations thereunder (for example, under section 1256(a)-(1)).

(2) *Identified netting transaction.* For purposes of this section, an identified netting transaction is a conversion transaction (as defined in section 1258(c)) that the taxpayer identifies as an identified netting transaction on its books and records. Identification of each position of the conversion transaction must be made before the close of the day on which the position becomes part of the conversion transaction. No particular form of identification is necessary, but all the positions of a single conversion transaction must be identified as part of the same transaction and must be distinguished from all other positions.

(c) *Definition of built-in loss.* For purposes of this section, built-in loss means—

(1) Built-in loss as defined in section 1258(d)(3)(B); and

(2) If a taxpayer realizes gain or loss on any one position of a conversion transaction (for example, under section 1256), as of the date that gain or loss is realized, any unrecognized loss in any other position of the conversion transaction that is not disposed of, terminated, or treated as sold under any provision of the Code or regulations thereunder within 14 days of and within the same taxable year as the realization event.

(d) *Examples.* These examples illustrate this section:

Example 1. Identified netting transaction with simultaneous actual dispositions. (i) On December 1, 1995, A purchases 1,000 shares of XYZ stock for \$100,000 and enters into a forward contract to sell 1,000 shares of XYZ stock on November 30, 1997, for \$110,000. The XYZ stock is actively traded as defined in §1.1092(d)-1(a) and is a capital asset in A's hands. A maintains books and records on which, on December 1, 1995, it identifies the two positions as all the positions of a single conversion transaction. A owns no other XYZ stock. On December 1, 1996, when the applicable imputed income amount for the transaction is \$7,000, A sells the 1,000 shares of XYZ stock for \$95,000. On the same day, A terminates its forward contract with its counterparty, receiving \$10,200. No dividends were received on the stock during

the time it was part of the conversion transaction.

(ii) The XYZ stock and forward contract are positions of a conversion transaction. Under section 1258(c)(1), substantially all of A's expected return from the overall transaction is attributable to the time value of the net investment in the transaction. Under section 1258(c)(2)(B), the transaction is an applicable straddle as defined in section 1258(d)(1).

(iii) A disposed of or terminated all the positions of the conversion transaction within 14 days and within the same taxable year as required by paragraph (b)(1) of this section. The transaction is an identified netting transaction because it meets the identification requirement of paragraph (b)(2) of this section. Solely for purposes of section 1258(a), the \$5,000 loss realized (\$100,000 basis less \$95,000 amount realized) on the disposition of the XYZ stock is netted against the \$10,200 gain recognized on the disposition of the forward contract. Thus, the net gain from the conversion transaction for purposes of section 1258(a) is \$5,200 (\$10,200 gain less \$5,000 loss). Only the \$5,200 net gain is recharacterized as ordinary income under section 1258(a) even though the applicable imputed income amount is \$7,000. For federal tax purposes other than section 1258(a), A has recognized a \$10,200 gain on the disposition of the forward contract (\$5,200 of which is treated as ordinary income) and realized a separate \$5,000 loss on the sale of the XYZ stock.

Example 2. Identified netting transaction with built-in loss. (i) The facts are the same as in *Example 1*, except that A had purchased the XYZ stock for \$104,000 on May 15, 1995. The XYZ stock had a fair market value of \$100,000 on December 1, 1995, the date it became part of a conversion transaction.

(ii) The results are the same as in *Example 1*, except that A has built-in loss (in addition to the \$5,000 loss that arose economically during the period of the conversion transaction), as defined in section 1258(d)(3)(B), of \$4,000 on the XYZ stock. That \$4,000 built-in loss is not netted against the \$10,200 gain on the forward contract for purposes of section 1258(a). Thus, the net gain from the conversion transaction for purposes of section 1258(a) is \$5,200, the same as in *Example 1*. The \$4,000 built-in loss is recognized and has a character determined without regard to section 1258.

(e) *Effective date and transition rule*—(1) *In general.* These regulations are effective for conversion transactions that are outstanding on or after December 21, 1995.

(2) *Transition rule for identification requirements.* In the case of a conversion transaction entered into before February 20, 1996, paragraph (b)(2) of this section is treated as satisfied if the identification is made before the close of business on February 20, 1996.

PART 602—OMB CONTROL
NUMBERS UNDER THE
PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§602.101 [Amended]

Par. 4. In §602.101, paragraph (c) is amended by adding the entry “1.1258–1 1545–1452” in numerical order to the table.

Margaret Milner Richardson,
*Commissioner of
Internal Revenue.*

Approved November 28, 1995.

Leslie Samuels,
*Assistant Secretary of
the Treasury.*

(Filed by the Office of the Federal Register on December 20, 1995, 8:45 a.m., and published in the issue of the Federal Register for December 21, 1995, 60 F.R. 66083)

Section 1445.—Withholding of Tax on Dispositions of United States Real Property Interests

26 CFR 1.1445–1: Withholding on dispositions of U.S. real property interests by foreign persons; in general.

T.D. 8647

DEPARTMENT OF TREASURY
Internal Revenue Service
26 CFR Part 1

Withholding of Tax on Dispositions of U.S. Real Property Interests by Foreign Persons.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to withholding upon certain distributions or dispositions of U.S. real property interests. These regulations reflect changes to the law made by the Omnibus Budget Reconciliation Act of 1993 and affect withholding agents required to withhold tax due on certain dispositions and distributions of U.S. real property interests.

DATES: These final regulations are effective January 22, 1996. These regulations are applicable to transactions occurring after August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Gwendolyn A. Stanley (202) 622-3860 (not a toll free-call).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations reflecting changes made by the Omnibus Budget Reconciliation Act of 1993 to the withholding rates on certain distributions and dispositions of U.S. real property interests. These regulations were not preceded by a Notice of Proposed Rulemaking because the withholding rates were changed by the Act. This document also updates the address of the Assistant Commissioner (International) to whom various forms must be sent.

Explanation of Provisions

The rate of withholding under section 1445(e)(1) and (2) of the Internal Revenue Code was increased from 34% to 35% by the Omnibus Budget Reconciliation Act of 1993. The existing regulations reflect the prior 34% withholding rate. These regulations reflect the increase in withholding to 35% (or the highest rate specified in section 1445(e)(1) or (2)) for dispositions occurring on or after August 10, 1993.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these final regulations were submitted to the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Gwendolyn Stanley, Office of Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Section 1.1445-5 also issued under 26 U.S.C. 1445(e)(6).

Section 1.1445-8 also issued under 26 U.S.C. 1445(e)(6). * * *

Par. 2. In section 1.1445-1, the section heading and paragraph (g)(10) are revised to read as follows:

§1.1445-1 Withholding on dispositions of U.S. real property interests by foreign persons: In general.

* * * * *

(g) * * *

(10) *Address of the Assistant Commissioner International.* Any written communication directed to the Assistant Commissioner (International) is to be addressed as follows: Director, Philadelphia Service Center; 11601 Roosevelt Blvd.; Philadelphia, PA 19255; ATTN: Drop Point 543X.

Par. 3. Section 1.1445-5 is amended as follows:

1. Paragraph (c)(1)(ii) is revised.

2. The third sentence and the last sentence of paragraph (c)(1)(iii)(A) are revised.

3. Paragraph (c)(1)(iii)(B) is removed.

4. Paragraph (c)(1)(iii)(C) is redesignated as (c)(1)(iii)(B) and revised.

5. Paragraph (c)(1)(iv) is revised.

6. Paragraph (c)(3)(ii) is revised.

7. The first sentence of paragraph (d)(1) is revised.

8. The second sentence of paragraph (d)(1) is removed.

The revisions read as follows:

§1.1445-5 Special rules concerning distributions and other transactions by corporations, partnerships, trusts, and estates.

* * * * *

(c)(1) * * *

(ii) *Disposition by partnership.* A partnership must withhold a tax equal to 35 percent (or the highest rate specified in section 1445(e)(1)) of each foreign partner's distributive share of the gain realized by the partnership upon the disposition of each U.S. real property interest. Such distributive share of the gain must be determined

pursuant to the principles of section 704 and the regulations thereunder. For the rules applicable to partnerships, interests in which are regularly traded on an established securities market, see §1.1445-8.

(iii) *Disposition by trust or estate—*
(A) *In general.* * * * The fiduciary must withhold 35 percent (or the highest rate specified in section 1445(e)(1)) of any distribution to a foreign beneficiary that is attributable to the balance in the U.S. real property interest account on the day of the distribution. * * * For rules applicable to trusts, interests in which are regularly traded on an established securities market and real estate investment trusts, see §1.1445-8.

(B) *Example.* The following example illustrates the rules of paragraph (c)(1)(iii)(A) of this section.

On January 1, 1994, A establishes a domestic trust (which has as its taxable year, the calendar year) for the benefit of B, a nonresident alien, and C, a U.S. citizen. The trust is not a trust subject to sections 671 through 679. Under the terms of the trust, the trustee, T, is given discretion to distribute income and corpus of the trust to provide for the reasonable needs of B and C. During the trust's 1994 tax year, T disposes of three parcels of vacant land located in the United States. The following chart illustrates the computation of the amount subject to withholding under section 1445 with respect to distributions made by T to B and C during 1994.

Date	Parcel sold	Gains or (loss) realized	Distributions to C	Distributions to B (before withholding)	Section 1445 withholding 35% rate	U.S. real property interest account
1/01/94						-0-
3/01/94	Parcel 1	140,000				140,000
3/05/94			5,000	10,000	3,500	125,000
3/15/94			10,000	5,000	1,750	110,000
5/01/94	Parcel 2	300,000				410,000
5/15/94	Parcel 3	(50,000)				360,000
12/01/94			170,000	170,000	59,500	20,000
1/01/95						-0-

(iv) *Disposition by grantor trust.* The trustee or equivalent fiduciary of a trust that is subject to the provisions of subpart E of part I of subchapter J (sections 671 through 679) must withhold a tax equal to 35 percent (or the highest rate specified in section 1445(e)(1)) of the gain realized from each disposition of a U.S. real property interest to the extent such gain is allocable to a portion of the trust treated

as owned by a foreign person under subpart E of part I of subchapter J.

* * * * *

(3) * * *

(ii) *Amount to be withheld.* A partnership or trust electing to withhold under this §1.1445-5(c)(3) shall withhold from each distribution to a foreign person an amount equal to 35 percent (or the highest rate specified in section

1445(e)(1)) of the amount attributable to section 1445(e)(1) transfers.

* * * * *

(d) *Distributions of U.S. real property interests by foreign corporations—*
(1) *In general.* A foreign corporation that distributes a U.S. real property interest must deduct and withhold a tax equal to 35 percent (or the rate specified in section 1445(e)(2)) of the

amount of gain recognized by the corporation on the distribution. * * *

* * * * *

Par. 4. Section 1.1445-8(c)(2)(i) is revised to read as follows:

§ 1.1445-8 Special rules regarding publicly traded partnerships, publicly traded trusts and real estate investment trusts (REITS).

* * * * *

(c) * * *

(2) *REITS*—(i) *In general.* The amount to be withheld with respect to a distribution by a REIT, under this section shall be equal to 35 percent (or the highest rate specified in section 1445(e)(1)) of the amount described in paragraph (c)(2)(ii) of this section.

* * * * *

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved November 28, 1995.

Leslie Samuels,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on December 20, 1995, 8:45 a.m., and published in the issue of the Federal Register for December 21, 1995, 60 F.R. 66076)

Part III. Administrative, Procedural, and Miscellaneous

Rev. Proc. 96-8A

26 CFR 601.201: Rulings and determination letters.

SECTION 1. PURPOSE

The purpose of this revenue procedure is to correct errors in Rev. Proc. 96-8, 1996-1 I.R.B. 187, relating to user fees. These corrections will be incorporated into Rev. Proc. 96-8 when it is published in the first cumulative bulletin of 1996.

SECTION 2. CORRECTIONS TO REV. PROC. 96-8

- .01 Section 6.04(5) is corrected to read:

Nonmass submission (new or amended) by M & P sponsoring organization, per adoption agreement \$3,000

- .02 Paragraphs (4), (5), and (6) of section 6.05, and paragraphs (6) and (7) of section 6.06, are corrected to state that the fee, in each case, is \$400.
- .03 Paragraph 6.08(1)(a) is corrected to state that the fee is \$500.

SECTION 3. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 96-8 is modified.

SECTION 4. EFFECTIVE DATE

This revenue procedure is effective January 2, 1996.

DRAFTING INFORMATION

The principal author of this revenue procedure is John Turner of the Employee Plans Division. For further information regarding this revenue procedure, please contact Mr. Turner on (202) 622-6214. (This is not a toll-free number.)

Part IV. Items of General Interest

Supplemental Information on Treasury Bills for Publication 1212

Announcement 96-11

Banks, brokers, and other middlemen who report discount on Treasury bill redemptions on Form 1099-INT must use the owner's purchase price, where available, to determine the amount of discount to report. This information can usually be obtained from the owner's

or middleman's records. However, if the owner's purchase price is not available from existing records, the middleman must report the discount as if the holder had purchased the Treasury bill at its original issue price. In this case, the middleman must use as the original issue price the noncompetitive issue price for the longest-maturity Treasury bill maturing on that date.

For Treasury bill redemptions when

the owner's purchase price *cannot* be determined, the following list gives the noncompetitive issue prices and corresponding amounts of discount to be reported on Form 1099-INT for Treasury bills maturing July through December 1996. This list, which should also help middlemen determine any amounts subject to backup withholding, supplements the list that appears in Publication 1212, *List of Original Issue Discount Instruments* (Rev. Nov. 95).

CUSIP Number	Maturity Date	Issue Date	Issue Price (% of Principal Amount)	Discount to be Reported as 1995 Interest (per \$1,000 Maturity Value)
912794				
W42	01/04/96	07/06/95	97.240	27.60
W59	01/11/96	01/12/95	93.064	69.36
W67	01/18/96	07/20/95	97.270	27.30
W75	01/25/96	07/27/95	97.240	27.60
W83	02/01/96	08/03/95	97.275	27.25
W91	02/08/96	02/09/95	93.337	66.83
X25	02/15/96	08/17/95	97.260	27.40
X33	02/22/96	08/24/95	97.255	27.45
X41	02/29/96	08/31/95	97.300	27.00
X58	03/07/96	03/09/95	93.772	62.28
X66	03/14/96	09/14/95	97.305	26.95
X74	03/21/96	09/21/95	97.361	26.39
X82	03/28/96	09/28/95	97.336	26.64
X90	04/04/96	04/06/95	93.913	60.87
Y24	04/11/96	10/12/95	97.310	26.90
Y32	04/18/96	10/19/95	97.300	27.00
Y40	04/25/96	10/26/95	97.305	26.95
Y57	05/02/96	05/04/95	94.034	59.66
Y65	05/09/96	11/09/95	97.326	26.74
Y73	05/16/96	11/16/95	97.305	26.95
Y81	05/23/96	11/24/95	97.360	26.40
Y99	05/30/96	06/01/95	94.398	56.02
Z23	06/06/96	12/07/95	97.376	26.24
Z31	06/13/96	12/14/95	97.371	26.29
Z49	06/20/96	12/21/95	97.396	26.04
Z56	06/27/96	06/29/95	94.722	52.78

Announcement of the Disbarment, Suspension, or Consent to Voluntary Suspension of Attorneys, Certified Public Accountants, Enrolled Agents and Enrolled Actuaries From Practice Before the Internal Revenue Service

Under 31 Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent or enrolled actuary, in order to avoid the institution or conclusion of a proceeding for his disbarment or suspension from practice before the Internal Revenue Service, may offer his consent to suspension from such practice. The Director of Practice, in his discretion, may suspend an attorney, certified public accountant, enrolled agent or enrolled actuary in accordance with the consent offered.

Attorneys, certified public accountants, enrolled agents and enrolled actuaries are prohibited in any Internal

Revenue Service matter from directly or indirectly employing, accepting assistance from, being employed by, or sharing fees with, any practitioner disbarred or suspended from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents and enrolled actuaries to identify practitioners under consent suspension from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attor-

ney, certified public accountant, enrolled agent or enrolled actuary and date or period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks or for as many weeks as is practicable for each attorney, certified public accountant, enrolled agent or enrolled actuary so suspended and will be consolidated and published in the Cumulative Bulletin.

The following individuals have been placed under consent suspension from practice before the Internal Revenue Service:

Name	Address	Designation	Date of Suspension
Isdamer, Thomas M.	Crofton, MD	CPA	October 31, 1995 to October 30, 1996
Cacciola, Marlene	Pittsburg, CA	Enrolled Agent	November 9, 1995 to May 8, 1996
Goldman, William D.	Hot Springs, AR	Attorney	November 9, 1995 to November 8, 1996
Armstrong, David L.	Norman, OK	CPA	Indefinite from November 10, 1995
Heckathorn, Ben	Red Oak, TX	CPA	Indefinite from November 28, 1995
Tisdell, Linda	Seattle, WA	Attorney	
		Enrolled Agent	November 28, 1995 to May 27, 1997
Webb, Herbert M.	Gainesville, FL	Attorney	December 21, 1995 to June 20, 1997
Hipp, Robert J.	Evanston, IL	CPA	December 28, 1995 to April 27, 1996
Ruff, James M.	Willmar, MN	CPA	January 1, 1996 to March 31, 1996
Mulkerin, John J.	Wheaton, IL	CPA	January 5, 1996 to April 4, 1996
Redwitz, Robert	Irvine, CA	CPA	February 15, 1996 to May 14, 1996
Lind, Stanley L.	Milwaukee, WI	Attorney	March 1, 1996 to February 28, 1997
Dais, Robert E.	Plano, TX	CPA	March 1, 1996 to February 28, 1997

Under Section 330, Title 31 of the United States Code, the Secretary of the Treasury, after due notice and opportunity for hearing, is authorized to suspend or disbar from practice before the Internal Revenue Service any person who has violated the rules and regulations governing the recognition of attorneys, certified public accountants, enrolled agents or enrolled actuaries to practice before the Internal Revenue Service.

Attorneys, certified public accountants, enrolled agents, and enrolled actuaries are prohibited in any Internal Revenue Service matter from directly

or indirectly employing, accepting assistance from, being employed by or sharing fees with, any practitioner disbarred or under suspension from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents and enrolled actuaries to identify such disbarred or suspended practitioners, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attorney, certified public accountant, enrolled

agent or enrolled actuary, and the date of disbarment or period of suspension. This announcement will appear in the weekly Bulletin for five successive weeks or as long as it is practicable for each attorney, certified public accountant, enrolled agent or enrolled actuary so suspended or disbarred and will be consolidated and published in the Cumulative Bulletin.

After due notice and opportunity for hearing before an administrative law judge, the following individuals have been disbarred from further practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Muraskin, David	New York, NY	Attorney	November 6, 1995
Kelsey, Patrick	Poolesville, MD	CPA	November 13, 1995

Announcement of the Expedited Suspension of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries From Practice Before the Internal Revenue Service

Under title 31 of the Code of Federal Regulations, section 10.76, the Director of Practice is authorized to immediately suspend from practice before the Internal Revenue Service any practitioner who, within five years, from the date the expedited proceeding is instituted, (1) has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause; or (2) has been convicted of any crime under title 26 of the United States Code or, of a felony under title 18 of the United States Code involving dishonesty or breach of trust.

Attorneys, certified public accountants, enrolled agents, and enrolled actuaries are prohibited in any Internal

Revenue Service matter from directly or indirectly employing, accepting assistance from, being employed by, or sharing fees with, any practitioner disbarred or suspended from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify practitioners under expedited suspension from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attorney, certified public accountant, enrolled

agent, or enrolled actuary, and date or period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks or for as many weeks as is practicable for each attorney, certified public accountant, enrolled agent, or enrolled actuary so suspended and will be consolidated and published in the Cumulative Bulletin.

The following individuals have been placed under suspension from practice before the Internal Revenue Service by virtue of the expedited proceeding provisions of the applicable regulations:

Name	Address	Designation	Date of Suspension
Trebatch, Henry T.	Great Neck, NY	CPA	Indefinite from November 6, 1995
Roomberg, Alan	Minersville, PA	CPA	Indefinite from November 10, 1995
Elfenbein, Emanuel B.	Miami, FL	Enrolled Agent	Indefinite from November 27, 1995
Cerullo, Louis, J.	Boca Raton, FL	CPA	Indefinite from November 27, 1995
Fogel, Harold	St. Paul, MN	CPA	Indefinite from December 13, 1995
Glover, Paul L.	Downers Grove, IL	Attorney	Indefinite from December 13, 1995
Miller, John R.	Akron, OH	Attorney	Indefinite from December 13, 1995
Pofahl, Charles	Dallas, TX	Attorney	Indefinite from December 18, 1995
Walburg, Douglas	Mahtomedi, MN	CPA	Indefinite from December 18, 1995
Hibler, Thomas M.	Plymouth, MI	CPA	Indefinite from December 18, 1995
Oringer, Ronald	Flanders, NJ	Attorney	Indefinite from December 29, 1995
Butcher, Frederick	Stillwater, NJ	CPA	Indefinite from December 29, 1995
Tokars, Frederic	Atlanta, GA	Attorney	Indefinite from December 29, 1995
Atkins, Sanford I.	Moreland Hills, OH	Attorney	Indefinite from December 29, 1995

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified, below*).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior

ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in law or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If

If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C.—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.

E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contribution Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign Corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.

PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statements of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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¹A cumulative list of all Revenue Rulings, Revenue Procedures, Treasury Decisions, etc., published in Internal Revenue Bulletins 1995-27 through 1995-52 will be found in Internal Revenue Bulletin 1996-1, dated January 2, 1996.

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¹A cumulative finding list for previously published items mentioned in Internal Revenue Bulletins 1995-27 through 1995-52 will be found in Internal Revenue Bulletin 1996-1, dated January 2, 1996.

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